

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

SHAWN NELSON,

Debtor.

Case No. **06-60001-7**

O R D E R

At Butte in said District this 5th day of January, 2006.

On January 3, 2006, Debtor filed a chapter 7 case, without paying the filing fee. On January 4, 2006, Debtor filed an application for waiver of the chapter 7 filing fee for individuals who cannot pay the filing fee in full or in installments. Debtor states in the application that his family size is three (3). He states that his combined monthly income from line 16 of Schedule I is \$3,343. Debtor states that his monthly expenses from line 18 of Schedule J is \$2,433. Debtor states in the Statement of Monthly Net Income on Schedule J that his monthly net income is \$910. Debtor in response to question 14 of the application states that he has paid \$200.00 to someone other than an attorney for services rendered in connection with this case. Debtor in question 9 of his Statement of Financial Affairs does not disclose any person providing any consultation of service concerning this case. Debtor provides no explanation or information in question 18 of the application for waiver as to why he is unable to pay the filing fee in installments.

On October 17, 2005, numerous amendments to the bankruptcy code became effective through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA").

One of the amendments, 28 U.S.C. § 1930(f) (1), provides:

Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. § 9902(2)]) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the “filing fee” means the filing fee required by subsection (a), or any other fee prescribed by the Judicial Conference under subsection (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

Section 673(2) of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. § 9902(2)] defines the poverty line as follows:

The term "poverty line" means the official poverty line defined by the Office of Management and Budget based on the most recent data available from the Bureau of the Census. The Secretary shall revise annually (or at any shorter interval the Secretary determines to be feasible and desirable) the poverty line, which shall be used as a criterion of eligibility in the community services block grant program established under this chapter. The required revision shall be accomplished by multiplying the official poverty line by the percentage change in the Consumer Price Index for All Urban Consumers during the annual or other interval immediately preceding the time at which the revision is made. Whenever a State determines that it serves the objectives of the block grant program established under this chapter, the State may revise the poverty line to not to exceed 125 percent of the official poverty line otherwise applicable under this paragraph.

The word “Secretary” in the foregoing provision “means the Secretary of Health and Human Services.” 42 U.S.C. §9902(4).

For clarification, what is the “official poverty line defined by the Office of Management and Budget?” In a segment provided on the internet by the U.S. Department of Health & Human Services (“HHS”) in its “Frequently Asked Questions Related to the Poverty Guidelines and Poverty,” HHS defines the phrase as follows:

This phrase refers to the Census Bureau poverty thresholds, although it is included in the legislative section of the 1981 Omnibus Budget Reconciliation Act (OBRA) that requires the Secretary of Health and Human Services to update the poverty guidelines annually. The thresholds are mentioned in this legislative section because they are the starting point from which the poverty guidelines are calculated. (The legislative section is section 673(2) of OBRA-1981 or of the Community Services Block Grant Act; the U.S. Code citation is 42 U.S.C. 9902(2).)

The Census Bureau poverty thresholds are described using this phrase because in August 1969, the Bureau of the Budget (the predecessor of the Office of Management and Budget) issued a document designating the Census Bureau poverty thresholds as the federal government's official statistical definition of poverty. (The 1978 version of this document is available on the Census Bureau website.) However, the role of the Office of Management and Budget (OMB) vis-a-vis the poverty line was limited to this one-time designation of the poverty thresholds as the official federal statistical definition of poverty. OMB has never issued either the poverty thresholds or the poverty guidelines.

To make a statutory reference to the poverty guidelines, one can use the phrase “the poverty guidelines updated periodically in the *Federal Register* by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).”

<http://aspe.hhs.gov/poverty/faq.shtml#differences> . As noted in the above statement from HHS, reference is made to poverty guidelines and poverty thresholds. A difference between the two concepts does exist:

Since 1965, there have been two slightly different versions of the federal poverty measure:

the poverty thresholds, and
the poverty guidelines.

The poverty thresholds are the original version of the federal poverty measure (developed by Mollie Orshansky of the Social Security Administration). They are updated each year by the Census Bureau. The thresholds are used mainly for statistical purposes – for instance, preparing the estimates of the number of Americans in poverty for each year's report. Values of the poverty thresholds for the years 1980-2004 for families of different sizes are available on the Census Bureau's web site. For example, for a four-person family unit with two children,

the 2004 poverty threshold is \$19,157. For one- or two-person family units, the poverty thresholds differ by age; the 2004 threshold for one individual under age 65 is \$9,827, whereas for an individual 65 or over it is \$9,060.

The poverty guidelines are the other version of the federal poverty measure. They are issued each year in the Federal Register by the Department of Health and Human Services (HHS). The guidelines are a simplification of the poverty thresholds for use for administrative purposes--for instance, determining financial eligibility for certain federal programs. They are adjusted for families of different size.

Poverty guidelines for the years since 1982 and other historical information appear on the web page "Poverty Guidelines, Research, and Measurement" of the Office of the Assistant Secretary for Planning and Evaluation in the U.S. Department of Health and Human Services. Separate HHS poverty guidelines for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966-1970 period.

Both the thresholds and the guidelines are the same for all mainland states, regardless of regional differences in the cost of living. Both are updated annually for price changes using the Consumer Price Index for All Urban Consumers (CPI-U). The poverty guidelines are sometimes loosely referred to as the "federal poverty level" or "poverty line," but these terms are ambiguous, and should be avoided in situations (e.g., legislative or administrative) where precision is important.

www.irp.wisc.edu/faqs/faq1.htm . If one compares the poverty thresholds with the poverty guidelines, a difference in the respective amounts does occur. In 42 U.S.C. § 9902(2), Congress stated, "The Secretary shall revise annually (or at any shorter interval the Secretary determines to be feasible and desirable) the poverty line, which shall be used as a criterion of eligibility in the community services block grant program established under this chapter." As the poverty guidelines are used for eligibility and poverty thresholds are used for statistical purposes, the Court concludes, based upon the above discussion, that the poverty guidelines are to be used in determining the official poverty line, even though 11 U.S.C. § 1930(f) does not specifically state one term or the other and even though § 1930(f) references the language "official poverty line

defined by the Office of Management and Budget,” which has been interpreted by HHS to mean poverty thresholds.

COMPARISON BETWEEN POVERTY GUIDELINES AND POVERTY THRESHOLDS
AND CALCULATION OF 150% OF POVERTY GUIDELINE
48 Contiguous States

Persons in Family Unit	Poverty Guideline*	Poverty Threshold**	150% of Poverty Guideline***
1	\$9,570	\$9,827	\$14,355
2	12,830	12,649	19,245
3	16,090	15,219	24,135
4	19,350	19,157	29,025
5	22,610	22,543	33,915
6	25,870	25,241	38,805
7	29,130	28,271	43,695
8	32,390	31,082	48,585

* Source: <http://aspe.hhs.gov/poverty> . Federal Register, Vol. 70, No. 33, February 18, 2005, pp.8373-75. These values will change in February 2006 and annually thereafter.

** Source: <http://www.census.gov/hhes/poverty/threshld/thresh04.html> . The values vary depending on if related children under age 18 reside with the family and if only two people reside in the household that are either over or under age 65. For this table, the Court uses the values for 1- and 2-member family sizes under age 65 and 3-member families with two children under age 18 and 4-member families and greater with 2 members over age 18 and the other family members being under age 18.

*** These values will change in February 2006 and annually thereafter.

In applying the above analysis to Debtor’s application for waiver, the Court concludes that Debtor does not qualify for a fee waiver for the following reasons. The first factor of 28 U.S.C. § 1930(f) requires the Court to determine if the family combined income is less than 150 percent of the official poverty line for Debtor’s family size. Debtor, his spouse and child comprise a 3-member family. The poverty line for a family of 3 under the poverty guidelines is

\$16,090.00. The total combined monthly income for Debtor and his spouse (the child is excluded as no income is reported on the application) is \$3,343. This amount times 12 months to establish annual income equals \$40,116. This amount exceeds the 150 percent cap of the poverty guideline set at \$24,135.

The second factor of 28 U.S.C. § 1930(f) requires the Court to determine if Debtor is unable to pay the fee in installments. Debtor stated no reason in his application why he could not pay the fee in installments. Debtor does state on Schedule J, subject to penalty of perjury, that his monthly net income is \$910. The Court concludes, based on Debtor stating no reason why he cannot pay the fee in installments, and stating that his monthly net income is \$910, that Debtor is able to pay the fee, if not in full, then certainly in installments.

The two factor test contained in 28 U.S.C. § 1930(f) for granting a fee waiver application is conjunctive and not disjunctive. Debtor does not satisfy both factors. For cause,

IT IS ORDERED that Debtor's application for waiver of the chapter 7 filing fee for individuals who cannot pay the filing fee in full or in installments is denied; and that Debtor must either pay the filing fee of \$274 in full on or before January 12, 2006, or file an application to pay the filing fee in installments on or before January 12, 2006.

BY THE COURT

A handwritten signature in dark ink, appearing to read "Ralph B. Kirscher", is written over a horizontal line.

HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana